

1 HONORABLE RICHARD A. JONES
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 JULIE CAIRONE¹, et al.,

11 Plaintiffs,

12 v.

13 PROSPECT MORTGAGE, LLC,

14 Defendant.

CASE NO. 13-722 RAJ

ORDER

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16 This matter comes before the court on plaintiffs' motion to strike defendant's jury
17 trial demand. Dkt. # 18.

18 Federal Rule of Civil Procedure 12(f) allows for a court to "strike from a pleading
19 ... any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. Proc.
20 12(f). The function of a 12(f) motion to strike is to avoid the expenditure of time and
21 money that must arise from litigating spurious issues by dispensing with those issues
22 prior to trial. *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), *rev'd on*
23 *other grounds*, 510 U.S. 517 (1994). Immaterial matter is that which has no essential or

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27 ¹ Although Ms. Cairone was terminated as a party to this action, the parties have not moved the court for an order formally changing the caption. The court will continue to caption this case with Ms. Cairone as the plaintiff, and ORDERS the parties to do so as well on all future filings.

1 important relationship to the claim for relief or the defenses being pleaded, and
 2 impertinent matter consists of statements that do not pertain, and are not necessary, to the
 3 issues in question. *Id.* Motions to strike are generally disfavored, and should be denied
 4 unless the matter has no logical connection to the controversy at issue and may prejudice
 5 one or more parties. *Johnson v. U.S. Bancorp*, Case No. C11-2010RAJ, 2012 WL
 6 6615507, *7 (W.D. Wash. Dec. 18, 2012). In deciding a motion to strike, the court must
 7 view the pleading in the light most favorable to the pleading party. *Id.*

8 The Constitutions of the United States and Washington guarantee the right to trial
 9 by jury in civil cases. U.S. Const. Amend. VII; Wash. Const. art. 1, § 21. The parties
 10 agree that parties may waive their civil right to trial by jury through contractual waivers.
 11 Dkt. # 18 at 4; Dkt. # 19 at 5; *see also Frontline Processing Corp. v. First State Bank of*
Eldorado, 389 Fed. Appx. 748, 754 (9th Cir. 2010) (plaintiff waived right to jury trial
 12 based on jury-trial waiver provision in contract); *Ingle v. Circuit City Stores, Inc.*, 328
 13 F.3d 1165, 1170 (9th Cir. 2003) (arbitration agreements are subject to defenses that apply
 14 to contracts, and federal courts should apply ordinary state-law principles that govern the
 15 formation of contracts); *Adler v. Fred Lind Manor*, 153 Wash. 2d 331, 360, 103 P.3d 773
 16 (Wash. 2005) (“by knowingly and voluntarily agreeing to arbitration, a party implicitly
 17 waives his right to a jury trial by agreeing to an alternate forum, arbitration.”).

18 The Washington Supreme Court² has stated:

19 The doctrine of waiver ordinarily applies to all rights or privileges to which
 20 a person is legally entitled. A waiver is the intentional and voluntary
 21 relinquishment of a known right, or such conduct as warrants an inference
 22 of the relinquishment of such right. It may result from an express
 23 agreement or be inferred from circumstances indicating an intent to waive.
 24 It is a voluntary act which implies a choice, by the party, to dispense with
 25 something of value or to forego some advantage. The right, advantage, or
 26 benefit must exist at the time of the alleged waiver. The one against whom

27 ² It is unclear to the court why plaintiffs have cited legal authority from other
 jurisdictions.

1 waiver is claimed must have actual or constructive knowledge of the
2 existence of the right. He must intend to relinquish such right, advantage or
3 benefit; and his actions must be inconsistent with any other intention than
4 to waive them.

5 * * *

6 An implied waiver may arise where one party has pursued such a course of
7 conduct as to evidence an intention to waive a right, or where his conduct is
8 inconsistent with any other intention than to waive it. . . .

9 *Bowman v. Webster*, 44 Wash. 2d 667, 669-70, 269 P.2d 960 (Wash. 1954).

10 Here, plaintiffs were opt-in plaintiffs in a collective class action against defendant
11 in the Eastern District of California (the “*Sliger*” litigation). Based on a review of that
12 docket, the named plaintiffs made a demand for a jury trial upon filing the complaint in
13 October 2010. Case No. C11-465-LKK-EFB, Dkt. # 1. However, plaintiffs in this action
14 did not opt-in to the *Sliger* litigation until after the class had been conditionally certified
15 and over a year after the initial demand for a jury trial, between November 22, 2011 and
16 February 28, 2012. Dkt. # 1, Ex. A. In January 2013, the *Sliger* court entered an order
17 decertifying the class pursuant to a stipulation of the parties. Plaintiffs filed this case in
18 April 2013, and did not demand a jury trial.

19 The court finds that the simple act of opting in to a class action does not indicate a
20 course of conduct that evidences an intention to waive the jury waiver agreements, or
21 demonstrate that plaintiffs’ conduct in opting in was inconsistent with any other intention
22 than to waive the agreements. As the parties are well aware, putative class members
23 frequently opt-in to class actions pursuant to a notice and simply wait for resolution of
24 the case. There is no evidence that plaintiffs took any actions in the *Sliger* litigation,
25 other than filing a consent to make a claim under the Fair Labor Standards Act. Such an
26 action is insufficient as a matter of law to implicitly waive the jury waiver agreement,
27 especially where the jury demand was made prior to their involvement in the case.

1 Additionally, the jury waiver agreements explicitly evidence the parties' intent to
 2 waive the right to a jury in a civil case, and to have all disputes resolved by a judge.³ The
 3 court finds that plaintiffs have provided sufficient authentication of the jury waivers
 4 where they were produced by defendant as part of the personnel files in the *Sliger* action.
 5 Dkt. # 21-1 (Hansen Decl.) ¶¶ 3-6; *see Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 777
 6 n.20 (9th Cir. 2002) (citing other legal authority for the propositions that documents
 7 produced by a party in discovery are deemed authentic when offered by the part-
 8 opponent and that authentication can be accomplished through judicial admissions such
 9 as production of items in response to discovery requests).

10 For all the foregoing reasons, the court GRANTS plaintiffs' Rule 12(f) motion to
 11 strike defendants' jury demand. Given that defendant has not produced the personnel file
 12 for plaintiff Marta Montalto, and the court does not have evidence of an explicit jury
 13 waiver between her and defendant, this order does not apply to her. If such a waiver is
 14 found in her personnel file, she may file a motion to strike at that time.

15 Dated this 12th day of March, 2014.



16 The Honorable Richard A. Jones
 17 United States District Judge

21 ³ Although the jury waiver was not signed by defendant, it nevertheless demonstrates that
 22 defendant intended to waive its own right to a jury trial. The agreement provides: "Although the
 23 Company believes that our internal complaint resolution procedures should be sufficient to
 24 resolve any workplace problems that you may have, we recognize that sometimes
 25 notwithstanding everyone's best efforts, a matter cannot be resolved informally. In those rare
 26 instances, **we believe** that our nation's judges (such as federal judges who are appointed by
 27 Congress for life and thus are free from any outside bias or influence) are in the best position to
 resolve **our workplace disputes**. Accordingly, **we have created this policy**, which, in effect,
 says that if you file a lawsuit, a judge will decide if we acted correctly or incorrectly." Dkt. # 18-
 2 at 2-6 (Ex. 1 to Mot.) (emphasis added).